

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

BV CAPITAL, LLC, Respondent,)	No. ED102521
)	
vs.)	Appeal from the Circuit Court
)	of St. Louis County
LARRY HUGHES, Appellant, and)	
THIRD STREET INVESTORS, LLC,)	Hon. Steven H. Goldman
et al., Defendants.)	Filed: September 15, 2015

Larry Hughes appeals from the trial court's grant of summary judgment against him and in favor of BV Capital. Hughes contends the trial court erred in granting summary judgment in favor of BV Capital because: (1) it improperly considered Exhibit P; (2) BV Capital failed to prove its prima facie case for breach of guaranty against Hughes as Hughes's guaranty was not delivered to Truman Bank and Hughes's guaranty was not relied upon by Truman Bank in extending credit to TSI. Alternatively, Hughes contends whether his guaranty was delivered to Truman Bank and whether it was relied upon by Truman Bank in extending credit to TSI are issues of fact that must be determined by a trier of fact; and (3) it held BV Capital proved its standing to enforce Exhibit P against Hughes.

REVERSED AND REMANDED.

Division One holds: The trial court did not abuse its discretion in considering Exhibit P in the context of its grant of summary judgment. The trial court erred in granting summary judgment in favor of BV Capital because there are genuine issues of material fact regarding whether the guaranty was delivered to Truman Bank and whether Truman Bank relied on the guaranty in providing the loan to TSI, and a jury must determine these issues. We cannot address whether BV Capital had standing to enforce Exhibit P against Hughes until these issues of fact are determined.

Opinion by: Robert G. Dowd, Jr., P.J.
Mary K. Hoff, J. and Roy L. Richter, J., concur.

Attorney for Appellant:

Matthew A. Jacober

Attorney for Respondent:

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<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
